

Phillip J. Haberthur, WSBA #38038

E-mail: philh@landerholm.com

Joseph Vance, WSBA #25531

E-mail: joe.vance@landerholm.com

Jason M. Rosenbaum, WSBA #61903

E-mail: jason.rosenbaum@landerholm.com

Landerholm, P.S.

805 Broadway Street, Suite 1000

Vancouver, WA 98660

Telephone: (360) 696-3312

Brad E. Smith, WSBA #16435

E-mail: brads@feltmanewing.com

Feltman Ewing P.S.

421 W. Riverside Ave., Suite 1600

Spokane, WA 99201

Telephone: (509) 838-6800

The Honorable David G. Estudillo

Of Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DALE AND LETA ANDERSON,
HUSBAND AND WIFE; AND AS
TRUSTEES FOR THE ANDERSON
FAMILY TRUST,

Plaintiffs,

v.

STATE FARM FIRE AND CASUALTY
COMPANY,

Defendant.

Case No. 3:20-CV-05119-JRC

PRETRIAL ORDER

JURISDICTION

Jurisdiction is vested in this court by virtue of 28 U.S.C. § 1332 because the instant dispute is between citizens of different states, and the amount in controversy is over \$75,000.

CAUSES OF ACTION

Plaintiffs will pursue at trial the following claims: (a) Defendant's breach of its duty to act in good faith as an insurer; (b) Defendant's negligence; and (c) Defendant's violation of the Washington Consumer Protection Act.

ADMITTED FACTS

The following facts are admitted by the parties:

1. Plaintiffs, Dale and Leta Anderson, are a married couple who owned and managed several apartment buildings, including the Allwood Apartments.

2. Prior to 1997, Plaintiffs acquired multiple insurance policies from State Farm Fire & Casualty Company. These included (1) a liability policy, F-98-767693-5 with a \$1 million limit specifically covering the Allwood Apartments and (2) a \$2 million Personal Umbrella Liability Policy ("PLUP"), 47-93-2876-4, which provided the Plaintiffs with \$2 million in coverage in excess of their homeowners and auto coverage but which did not cover businesses liabilities such as the Allwood Apartments.

3. In 1997, an incident occurred at the Allwood Apartments when Angelica Trejo, a two-year-old, fell approximately 10 feet from a second-floor walkway. In 2003, the Andersons received a notice of representation from a personal injury attorney representing Angelica named Peggy Foraker. The Andersons forwarded the notice to State Farm where adjuster Carol Funk was assigned to the claim.

4. Ms. Funk took certain steps to investigate the claim against the Andersons and spoke to Ms. Foraker on the phone on one occasion in April of 2022. Ms. Funk and Ms. Foraker exchanged correspondence, shortly after the phone call.

5. Ms. Foraker claimed in a fax to Ms. Funk that the child's brain injuries were so severe that she valued the case in excess of \$1 million. Ms. Funk provided copies of the communications with Ms. Foraker to the Andersons.

6. Ms. Foraker filed a lawsuit against the Andersons in 2017, shortly before the expiration of the statute of limitations. Plaintiffs, Defendant and the Trejo family eventually agreed to a \$2 million settlement, with Defendant and Plaintiffs each contributing \$1 million.

ISSUES OF LAW

The following are the issues of law to be determined by the court:

1. Were Francis Strobeck and Terry Cornelius agents of State Farm Fire & Casualty Company as a matter of statute under RCW 48.17.010 and/or RCW 48.17.270?

2. Is Defendant estopped from arguing that Francis Strobeck and Terry Cornelius were not agents of State Farm Fire & Casualty Company?

3. Did Francis Strobeck and Terry Cornelius have apparent authority as agents to act on behalf of State Farm Fire & Casualty Company?

4. Does Defendant have a basis to have a jury instruction read regarding Francis Strobeck's and Terry Cornelius's status as independent contractors of State Farm Fire & Casualty Company?

5. Do Plaintiffs have a basis for alleging that State Farm Fire & Casualty Company is vicariously liable for negligence through the conduct of Francis Strobeck?

EXPERT WITNESSES

(a) Each party shall be limited to one expert witness on the issue of whether State Farm Fire & Casualty Company's claim handling practices, with regard to Dale and Leta Anderson's insurance claim at issue, conform and adhere to general applicable insurance industry practices and standards, including general applicable practices and standards with respect to document retention.

(b) The names and addresses of the expert witnesses to be used by each party at the trial and the issue upon which each will testify is:

(1) On behalf of Plaintiffs, Danette K. Leonhardi, Principal Consultant of Puget Sound Claim Consulting, whose address is 3625 Fremont North, #407, Seattle, WA 98103.

(2) On behalf of Defendant, Dennis Smith, whose address is 4800 Fremont Ave N. #202, Seattle, WA 98103.

OTHER WITNESSES

(a) On behalf of Plaintiffs:

WITNESS	SUBJECT MATTER	STATUS
Dale Anderson	Mr. Anderson will testify regarding his interactions with State Farm and the settlement of Angelica Trejo's lawsuit.	Will testify
Leta Anderson	Mrs. Anderson will testify regarding her interactions with State Farm and the settlement of Angelica Trejo's lawsuit.	Will testify
Peggy Foraker	Ms. Foraker will testify via her video deposition.	Will testify
Carol Funk	Ms. Funk will testify regarding her investigation and interactions with the Andersons.	Will testify
Steven McAlister	Mr. McAlister will testify regarding State Farm's handling of the claim.	Will testify
Richard Steward	Mr. Steward may testify regarding his supervision of Ms. Funk.	Possible witness only

(b) On behalf of Defendants:

WITNESS	SUBJECT MATTER	
Carol Funk	Ms. Funk will testify regarding her handling of the subject claim between 2003 and 2006.	Will testify
Dale Anderson	Mr. Anderson will testify regarding his interactions with State Farm agents and Carol Funk.	Will testify
Peggy Foraker	Ms. Foraker will testify by video regarding her interactions with State Farm and her reasons for failing to engage in settlement negotiations.	Will testify
Steve McAlister	Mr. McAlister may testify regarding State Farm's handling of the claim after 2006.	Possible witness only

EXHIBITS

Plaintiffs' Exhibits					
Ex #	Description	Authenticity	Admissibility	Objection	Admitted
1.	Apartment Claim File Adjustor notes from 2003-2006 (SF_APTCLAIM_000161-168)	Stipulated	Stipulated		Admitted
2.	Foraker Letter Initial Notice of Claim dated 1-23-03 (SF_APTCLAIM_00 3599)	Stipulated	Stipulated		Admitted
3.	Facsimile from Peggy Foraker to State Farm Insurance dated 4-22-03	Stipulated	Stipulated		Admitted
4.	Letter from Funk to Foraker dated 4-22-03 (SF_APTCLAIM_003616)	Stipulated	Stipulated		Admitted
5.	Letter from State Farm to Peggy Foraker dated 4-23-03 (SF_APTCLAIM_003619-3620)	Stipulated	Stipulated		Admitted
6.	Letter from Carol Funk to Dale and Leta Anderson dated 5-30-03 (Foraker Exhibit 6, SF_APTCLAIM_003623)	Stipulated	Stipulated		Admitted
7.	Code Violation Notice from City of Vancouver to Dale and Leta Anderson dated 4-30-03 (Foraker Ex. 7, SF_APTCLAIM_002569)	Stipulated	Stipulated		Admitted
8.	Letter from Carol Funk to Dale and Leta Anderson dated 11-19-04 (Foraker Exhibit 9, SF_APTCLAIM_003626)	Stipulated	Stipulated		Admitted
9.	Letter from Carol Funk to Dale and Leta Anderson dated 2-1-06 re: closing of file (Foraker Exhibit 10, SF_APTCLAIM_003603)	Stipulated	Stipulated		Admitted
10.	Cover (SFPAPERCLAIM_000001)	Stipulated	Stipulated		Admitted
11.	Carol Funk Progress Report dated 7-28-03 (SF_PAPERCLAIM000011)	Stipulated	Stipulated		Admitted
12.	Carol Funk Progress Report dated 6-16-03 and Mark Sawyer claim management comment dated 6-23-03 (SF_PAPERCLAIM000013)	Stipulated	Stipulated		Admitted
13.	Carol Funk Progress Report dated 6-03-03 (SF_PAPERCLAIM000016)	Stipulated	Stipulated		Admitted
14.	Memo from Carol Funk dated 4-18-03 summarizing meeting with Anderson's employees (SF_PAPERCLAIM000064)	Stipulated	Stipulated		Admitted

15.	Operations Guide introduction page (ANDDA00000219PROD)	Stipulated	Stipulated		Admitted
16.	ClaimsNet: Our Commitment to Our Policyholders (ANDDA00000456PROD)	Stipulated	Stipulated		Admitted
17.	Operations Guide 76-05, Claim Handling Procedures (ANDDA00000403PROD-00000433PROD)	Stipulated	Stipulated		Admitted
18.	Operations Guide 74-20, Coverage Questions (ANDDA00000331PROD-00000337PROD)	Stipulated	Stipulated		Admitted
19.	Operations Guide 74-21, Statements (ANDDA00000397PROD-00000401PROD)	Stipulated	Stipulated		Admitted
20.	Operations Guide 70-24, Excess Liability Procedure (ANDDA00000176PROD-00000196PROD)	Stipulated	Stipulated		Admitted
21.	Carol Funk Performance Review dated 4-6-04 (Funk Exhibit 1, ANDDA000001269PROD-000001280PROD)	Stipulated	Stipulated		Admitted
22.	Carol Funk Performance Review dated 3-31-05 (Funk Exhibit 2, ANDDA000001291PROD-000001304PROD)	Stipulated	Stipulated		Admitted
23.	Carol Funk Performance Review dated 3-21-06 (Funk Exhibit 3, ANDDA000001281PROD-000001290PROD)	Stipulated	Stipulated		Admitted
24.	Apartment Policy – Special Form 3 (SF_PLUPCLAIM_000202 - 236)	Stipulated	Stipulated		Admitted
25.	Cover Letter from Jay Stahnke to Zachary Stoumbos dated 7-11-18 with Personal Liability Umbrella Policy (PLUP) and Endorsements. (McAlister Exhibit 10)	Stipulated	Stipulated		Admitted
26.	State Farm Commercial Liability Umbrella Policy (McAlister Exhibit 7)	Stipulated	Stipulated		Admitted
27.	Letter re: Pre-Trial Analysis Plan from Elisha S. Smith to Steve McAlister dated 10-18-18 (SF_APTCLAIM_000504-512)	Stipulated	Stipulated		Admitted
28.	Pre-Trial Report dated 10-24-18 (SF_APTCLAIM_000133)	Stipulated	Stipulated		Admitted
29.	Anjelica Trejo v. Dale Anderson et al. Complaint Filed 2-24-17	Stipulated	Stipulated		Admitted

30.	Letter from Richard J. Konkol MD., Ph.D. to Stephen C. Hendricks re: Angelica Trejo cognitive disabilities dated 7-16-18	Stipulated	Stipulated		Admitted
31.	Settlement Agreement and Release of Claims dated 11-30-18	Stipulated	Stipulated		Admitted
32.	Check dated 12-3-18 from Leta Anderson, \$1 Million paid to the order of Hendricks Law Firm P.C. Trust Account (SF_APTCLAIM_001148)	Stipulated	Stipulated		Admitted
33.	State Farm Agent's Agreement (McAlister Exhibit 2)	Stipulated	Stipulated		Admitted
34.	Terry L. Cornelius Signed Acceptance of Agreement. (McAlister Exhibit 3, ANDDA00000926PROD)	Stipulated	Stipulated		Admitted
35.	Original Apartment Policy Application by Anderson (McAlister Exhibit 4, ANDDA00000055PROD-00000060PROD)	Stipulated	Stipulated		Admitted
36.	PLUP Application (McAlister Exhibit 5)	Stipulated	Stipulated		Admitted
37.	Anderson 1994 request to raise limit on umbrella policy to \$2 Million (McAlister Exhibit 6)	Stipulated	Stipulated		Admitted

Defendant's Exhibits					
Ex #	Description	Authenticity	Admissibility	Objection	Admitted
101	Funk Letter to Foraker dated 05/30/2003 (SF_APTCLAIM_003622)	Stipulated	Stipulated		Admitted
102	Funk Letter to Andersons dated 07/28/2003 (SF_APTCLAIM_003624)	Stipulated	Stipulated		Admitted
103	Letter to Funk from City of Vancouver 04/28/2003 (SF_APTCLAIM_00017-18)	Stipulated	Stipulated		Admitted
104	Request for 911 Call Information 04/23/2003 (SF_PAPERCLAIM_00077-78)	Stipulated	Stipulated		Admitted
105	Funk letter to Andersons 04/21/2003 (SF_PAPERCLAIM_00047)	Stipulated	Stipulated		Admitted
106	Funk letter to Mannings 04/07/2003 (SF_PAPERCLAIM_00067)	Stipulated	Stipulated		Admitted
107	Funk letter to Andersons 04/07/2003 (SF_PAPERCLAIM_00068)	Stipulated	Stipulated		Admitted
108	Funk letter to Foraker 04/03/2003 (SF_PAPERCLAIM_00069)	Stipulated	Stipulated		Admitted

109	Renewal Certificate PLUP_POLICY (ANDERSON_000277)	Stipulated	Stipulated		Admitted
110	Carol Funk Site Photos (SF_APTCLAIM_006479-6486)	Stipulated	Stipulated		Admitted
111	ER Chart Notes 12/10/97 (AT_00198-99; Exh. 7 to Jolstad Deposition)	Stipulated	Stipulated		Admitted
112	Elisha S. Smith Initial Report to State Farm July 18, 2017 (SF_APTCLAIM_003384-003397)	Stipulated	Stipulated		Admitted

DEPOSITION DESIGNATIONS

Pursuant to LCR 32(e), Plaintiffs' highlights of the transcript of the deposition of Peggy Foraker taken on June 25, 2021, are annexed hereto as **Exhibit "A"**.

Pursuant to LCR 32(e), Defendant's highlights of the transcript of the deposition of Dale Anderson taken on June 22, 2021, are annexed hereto as **Exhibit "B"**.

ACTION BY THE COURT

(a) This case is scheduled for trial before a jury on May 6, 2024, at 9:00 a.m.

(b) Trial briefs, jury instructions, and suggested questions to be asked of the jury by the court on voir dire have already been submitted by the parties.

This order has been approved by the parties as evidenced by the signatures of their counsel. This order shall control the subsequent course of the action unless modified by a subsequent order. This order shall not be amended except by order of the court pursuant to agreement of the parties or to prevent manifest injustice.

DATED this 1st day of May, 2024.



David G. Estudillo
United States District Judge

FORM APPROVED

/s/ Joseph Vance
PHILLIP J. HABERTHUR, WSBA #38038
JOSEPH VANCE, WSBA #25531
JASON M. ROSENBAUM, WSBA #61903
Of Attorneys for Plaintiffs Dale and Leta Anderson

/s/ Daniel L. Syhre
DANIEL L. SYHRE, WSBA #31458
Of Attorneys for Defendant State Farm Fire and Casualty Company